

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2018**

WARNING:

The following are not issues on the ESSAY PORTION (Questions 1 and 2) of the Constitutional Law Examination: mootness, ripeness, political question, case or controversy, standing or justiciability. NO CREDIT WILL BE GIVEN FOR DISCUSSION OF THESE ISSUES IN EITHER OF THE TWO ESSAY QUESTIONS.

QUESTION 1 — 50 POINTS

Judge Mary Smith serves as a Justice of the Peace in Louisiana. She is a devout member of a religious group called the Pure Angelicals. The beliefs of that group mirror many of the tenets of Christianity but also borrow several practices and rituals from the Jewish and Muslim religions. All members of the staff and all appearing before Judge Smith are familiar with her religion and her practices because every day at 9:00 a.m., 12 noon, and 3:00 p.m., she asks all who are present with her to pray aloud with her. When she asks them to pray, she always asks the same way: “Do you want to join me to give thanks to God for all the good He has done for all of us? You don’t have to, of course, and you’re free to leave; but I know you don’t want God to think you’re ungrateful. God doesn’t look too kindly on ungratefulness, and I don’t either.” Judge Smith always incorporates references to prayers from the religions of all those praying with her.

Judge Smith’s religious beliefs include strong beliefs concerning protecting God’s “little ones” — children. She believes that children of interracial couples suffer more than children of parents who both shared the same race. Judge Smith also believes that interracial couples divorce at a higher rate than other couples. Judge Smith has researched these issues and found one study that supports her theories indirectly. That study indicates that many interracial children are sometimes confused where they fit in and struggle to cope with multiple cultures. The studies do not provide statistical evidence regarding divorce rates or any other negative lifestyle consequences resulting from an interracial marriage. Nevertheless, Judge Smith holds to her theory that interracial children suffer more than all others and that interracial unions offend God.

Diana and Simon, an atheist, interracial couple who had dated for seven years, recently went to Judge Smith for her to perform their wedding ceremony. They arrived simultaneously with two other couples: a Caucasian couple and an African American couple. The other couples had dated only one and two years, respectively. Because the couples arrived at Judge Smith’s chambers shortly before noon, she strongly encouraged them to pray with her. Although Diana and Simon were uncomfortable with the request, they did not know how to politely refuse. All of the couples prayed with the judge.

Judge Smith then denied Diana and Simon’s marriage request. She explained that it violated her religious beliefs to knowingly allow harm to one of God’s little ones and that she could not encourage a union that would bring so much suffering upon the couple’s future offspring. She instructed them that the Justice of the Peace in the next parish, 30 miles away, would perform their ceremony. Diana and Simon later learned that Judge Smith wed both of the other couples that day. As a matter of principle, Diana and Simon do not want to get married in another parish and instead want Judge Smith to marry them. Thus, they have now filed suit in Louisiana state court against Judge Smith in both her individual capacity and in her capacity as a Louisiana justice of the peace.

Please answer the four subquestions on the next page. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

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- 1.1. Do Diana and Simon have any valid equal protection claims under the Fourteenth Amendment of the U.S. Constitution? Discuss fully. (15 points)**
- 1.2. Do Diana and Simon have any valid substantive due process claims under the Fourteenth Amendment of the U.S. Constitution? Discuss fully. (15 points)**
- 1.3. Do Diana and Simon have any valid claims under the Establishment Clause in the First Amendment of the U.S. Constitution? Discuss fully. (15 points)**
- 1.4. Do Diana and Simon have any valid claims under the Free Exercise Clause in the First Amendment of the U.S. Constitution? Discuss fully. (5 points)**

[End of Question 1]

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QUESTION 2 — 30 POINTS

Tom, a resident of Texas, and his brother, Lenny, a resident of Louisiana, are both avid hunters. Every year they plan a family hunting trip. This year's trip was planned as an excursion into the Louisiana swampland to hunt alligators.

When Tom and Lenny go to get their hunting licenses they are advised of a new Louisiana statute which states in part:

- (1) In order to provide an adequate, flexible, and coordinated statewide system of wildlife management and to maintain adequate and proper populations of wildlife species, the Louisiana Wildlife Commission (hereinafter "the Commission") shall have authority in this state, by appropriate rules and regulations, to:
 - (A) Determine under what circumstances, when, in which localities, by what means, what sex of, and in what amounts and numbers the wildlife of this state may be taken ...

They were further advised that pursuant to this legislative authority, the Commission created a system through which it determines by a field inventory, the number of that which can be hunted in a given year. The Commission would thereafter limit the total number of licenses that could be issued based upon that cap.

Both residents and nonresidents are required to apply for licenses for alligator hunting; however, the Commission limits the number of nonresident licenses to no more than one-third of all licenses issued. For the year 2018 it was determined that no more than 300 licenses for alligator hunting could be issued, thus limiting the number of out-of-state licenses to 100.

Tom completed his application for his license and was prepared to pay his fee for the license when he was advised by a clerk for the Commission that he was not eligible for a license due to his nonresident status. The clerk went on to explain that, according to the Commission's computer database, there were no more nonresident licenses available.

Tom considers his vacation plans ruined and he feels that his rights have been violated.

Please answer the two subquestions below. The subquestions in Question 2 are weighted equally. Explain each answer; an answer without an explanation will receive no credit.

- 2.1. Does Tom have any claims under the Privileges and Immunities Clause of the U.S. Constitution? Discuss fully. (15 points)**
- 2.2. Does Tom have any claims under the Commerce Clause of the U.S. Constitution? Discuss fully. (15 points)**

[End of Question 2]

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QUESTION 3 — 20 POINTS

Each of the following ten multiple choice items counts for two points. Select the letter that corresponds with the correct answer.

- 3.1. Commerce Clause**

- 3.2. Free Speech in Schools**

- 3.3. State Action**

- 3.4. Anti-Commandeering; Federalism**

- 3.5. Rational Basis Scrutiny; Equal Protection**

- 3.6. Commerce Clause**

- 3.7. Time, Place and Manner Restriction; Free Speech**

- 3.8. Import-Export Clause**

- 3.9. Adequate and Independent State Grounds; Justiciability**

- 3.10 Takings Clause**

[End of Question 3]

END OF CONSTITUTIONAL LAW TEST

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QUESTION 1 — 40 POINTS

The Louisiana Legislature passed Act 111 making it a felony for a registered sex offender to access a commercial social networking website where the sex offender knows that the site permits minor children to create or maintain personal web pages. The Act sets forth a definition of which commercial social networking websites it applies to, and also exempts websites that provide only photo-sharing, electronic mail, instant messenger or chat room and message board platforms. The statute further provides that it does not apply to websites that have as their primary purpose the facilitation of commercial transactions involving goods or services between members or visitors.

During debate on Act 111, Representative Right argued that it was necessary to protect minors from the evils of sexual abuse. He noted that Act 111 would prohibit registered sex offenders from accessing web sites that allow them the opportunity to gather information about minors. He pointed out that the internet is a powerful tool for the would-be child abuser because children often use the internet in ways that give offenders easy access to their personal information by communicating with strangers and allowing sites to disclose their locations.

Prior to enactment of Act 111, Rory Clark was convicted of sex-texting with a 15-year old female when he was an 18-year old high school student. At the suggestion of his attorney, Rory pled guilty but did not have to serve any jail time as the judge suspended Rory's sentence. However, as a result of his conviction, he was required to register as a sex offender.

Rory is now a college senior and star quarterback for University. Rory is also a member of the Future Physicians Club, he mentors at the local high school and he is a member of the All Faith Church where he assists in the Youth Ministry. Father Goodman, who is the head minister at the All Faith Church, has been at the forefront of the Kneel for the Change movement.

Rory was recently nominated for the Heisman Trophy and found out that he was also accepted into University Medical School on a full scholarship. In response to his nomination for the Heisman Trophy and his acceptance into University Medical School, Rory logged on to Facetell.com (one of the most popular message-based, information-feed social media websites subscribed to by over a billion users worldwide) and posted the statement below on his personal profile to his over 1,000 "follow-friends" on the site:

"Coach Smith just told me I was nominated for the Heisman Trophy, and my mom called and read me the acceptance letter from University Medical School. My dreams are being fulfilled. I can't wait to take care of my family. Praise be to God, Allah and Jehovah ... my commander in chief, WOW!!! Thank you, Jesus and Father Goodman for your guidance!!!"

Rory also tweeted: "Hopefully my recent nomination for the Heisman will increase awareness for my stance against police brutality and racial injustice.... Kneel for change."

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News of his Heisman nomination quickly spread. A local sportscaster who interviewed Rory made the announcement on the 6 o'clock news and stated that Rory is the leading candidate for the Heisman trophy who has also been accepted into University Medical School. He asked listeners to show their support for Rory and "like" Rory's Facetell page. Before the news ended, one of the anchors pointed out Rory's tweet and stated kids should "follow" Rory on Twitter. The anchor also stated "He is a role model and a faithful member of the All Faith Church."

One of the listeners was the Assistant D.A. who prosecuted Rory for the sex-texting case. He followed Rory's high school and college career but was dissatisfied that Rory, who in protest against police brutality and racial injustice, refused to stand during the national anthem before games. Coincidentally this D.A. had also attended University and disliked the All Faith Church and Father Goodman because of their position regarding the Kneel for Change movement. The Assistant D.A. promptly indicted Rory for violating Act 111. Rory soon learned of the Assistant D.A.'s dislike of both the All Faith Church and Father Goodman.

- 1.1. Does Rory have a valid basis to challenge the indictment under the Free Speech Clause in the First Amendment of the U.S. Constitution? Discuss fully. (24 points)**
- 1.2. Does Rory have a valid basis to challenge the indictment under the Free Exercise Clause in the First Amendment of the U.S. Constitution? Discuss fully. (8 points)**
- 1.3. Does Rory have a valid basis to challenge the indictment under the Establishment Clause in the First Amendment of the U.S. Constitution? Discuss fully. (8 points)**

[End of Question 1]

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QUESTION 2 — 40 POINTS

Six years ago, the Louisiana legislature, with the encouragement of several anti-drunk driving organizations, enacted Act 102 which provides as follows:

In an effort both to curb persons from driving while intoxicated and to give other drivers warning about persons who may be driving while intoxicated, the Louisiana Department of Transportation and Development is directed to issue license plate stickers labeled “DWI” to every person who has been convicted of three (3) or more violations for driving while intoxicated and/or has been issued five (5) or more citations for driving while intoxicated, regardless of convictions. A “DWI” license plate sticker so issued is to be placed on the license plate of each vehicle owned by each such person and is to remain in place for a minimum of two (2) years following the issuance of the last citation for driving while intoxicated.

The presence of a “DWI” sticker on a license plate shall serve as probable cause for any law enforcement officer to stop the driver of said vehicle, check the license of the driver and confirm if the driver is driving while intoxicated.

Since Act 102 was passed, Bubba has been issued more than ten DWI citations, only two of which led to convictions. Following his second conviction, Bubba joined Alcoholics Anonymous and has been sober for the past three years. Bubba’s last citation was issued eighteen months ago but did not lead to a conviction because there was no proof that Bubba was intoxicated at the time he was stopped.

Bubba recently purchased a vehicle. Promptly thereafter, the Department of Transportation and Development (DOTD) sent Bubba a “DWI” sticker with a notice stating that, under Act 102, he was required to affix the sticker to the license plate on his vehicle. Bubba does not think that it is fair that he has to place this sticker on his license plate because, in part, he believes placing the sticker on his license plate would violate his privacy and his right to travel. Bubba has now sued the State through the DOTD for a judgment that, under the Fourteenth Amendment of the U.S. Constitution, he is not required to place any “DWI” sticker on his license plate.

- 2.1. Does Bubba have any valid procedural due process claims under the Fourteenth Amendment of the U.S. Constitution? Discuss fully. (15 points)**
- 2.2. Does Bubba have any valid substantive due process claims under the Fourteenth Amendment of the U.S. Constitution? Discuss fully. (15 points)**
- 2.3. Does Bubba have any valid claims under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution? Discuss fully. (10 points)**

[End of Question 2]

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QUESTION 3 — 20 POINTS

Ten multiple choice questions, each worth 2 points, tested the following areas of law:

- 3.1. Federalism; Supremacy Clause
- 3.2. First Amendment; Freedom of Association
- 3.3. Commerce Clause
- 3.4. Free Speech in schools
- 3.5. State Action
- 3.6. Takings Clause
- 3.7. Anti-Commandeering; Federalism
- 3.8. Equal Protection; Rational Basis Scrutiny
- 3.9. Commerce Clause
- 3.10. Free Speech – time, place, manner restrictions

[End of Question 3]

END OF CONSTITUTIONAL LAW TEST

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QUESTION 1 — 40 POINTS

The New Orleans City Council enacted an ordinance requiring payment of an annual tax of \$250.00 by each household in the city with two or more children. The tax applies only to people who have become residents of the city since the effective date of the ordinance. In the ordinance, the City Council states that the purpose of the ordinance is to provide youth recreation and development programs and reimburse the city for additional public school expenses and costs of recreational facilities in the City of New Orleans attributable to new residents.

Henry and Whitney Mills, husband and wife, became residents of the City of New Orleans since the effective date of the tax ordinance. They live alone and have no children, but they have applied for adoption of twins. Henry and Whitney expect the adoption will become complete within a year, and they do not want to pay the annual tax.

Henry and Whitney are interested in challenging the ordinance on constitutional grounds.

- 1.1. Do Henry and Whitney have standing to challenge the ordinance? Discuss.**
- 1.2. Assuming that they have standing, discuss the Equal Protection and Substantive Due Process arguments Henry and Whitney might reasonably make in challenging the ordinance. Will they be successful?**

[End of Question 1]

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QUESTION 2 — 40 POINTS

New Transport Lines is a small bus operator incorporated in Florida. New Transport Lines is licensed to operate in Louisiana, Mississippi and Florida. New Transport Lines has consistently maintained licenses to operate in Louisiana for more than two decades.

A majority of New Transport Lines' revenue comes from groups in Louisiana that travel around Louisiana, and to Mississippi Gulf Coast casinos and also to Disney World in Orlando, Florida. New Transport Lines faces stiff competition from Louisiana-based bus operators for these routes.

In an effort to remain competitive, New Transport Lines recently purchased a new fleet of buses in Florida that replaced older buses that became costly to operate. The new buses complied with all federal standards and regulations but did not come equipped with seat belts for passengers, which were not required by federal standards and regulations.

Two weeks following New Transport Lines' purchase of the new fleet of buses, the Louisiana Legislature enacted a statute that required all buses which operate as common carriers on the highways of Louisiana be equipped with seat belts for passengers. There were no hearings on the legislation. Buses which were purchased a month or more before enactment of the statute, and buses operated by Louisiana corporations, were exempt from the requirement. Bus operators in violation of the statute are fined \$1,000.00 and prohibited from operating within the state of Louisiana for a period of one year following eventual compliance with the statute. In addition, failure to comply with the statute could result in revocation of licenses to operate in Louisiana. The stated purpose of the statute was to provide for the health, safety and welfare of passengers on buses that travel Louisiana highways.

New Transport Lines' first notice of the statute was when one of its drivers was pulled over in Louisiana and issued a summons to appear in court and fined \$1,000.00 for operating a bus without seat belts for passengers. The owners of New Transport Lines fear that imposition of the fine and requiring them to incur substantial costs to comply with the statute, coupled with a prohibition from operating in Louisiana for one year following compliance, will be financially devastating. More importantly, they fear New Transport Lines' license to operate in Louisiana may be revoked.

- 2.1. What arguments might New Transport Lines make to challenge the constitutionality of the statute as it relates to New Transport Lines, and is it likely to be successful? Discuss. Do not discuss Standing, Takings, the Supremacy Clause or Preemption.**

[End of Question 2]

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QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Article III (1), due process (1), equal protection (1), federalism (1), First Amendment (3),
Fourteenth Amendment (1), interstate commerce (1), takings clause (1)

[End of Question 3]

END OF CONSTITUTIONAL LAW TEST

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QUESTION 1 — 40 POINTS

The state legislature has recently completed a study on the behavior of Louisiana teenagers. The study revealed a relationship between school dropout rates and the level of violent criminal activity. The study indicated that the connection was most pronounced among boys ages 15 to 17 years old, revealing a significant increase in violent crime activity in school districts that also had a high dropout rate.

A Louisiana State Senator was very disturbed by what he perceived as a breakdown in personal responsibility and social order among Louisiana teenagers. Thus, he sponsored a bill, which was passed by the Louisiana Legislature, signed by the governor and enacted into law, creating a state executive agency called the Louisiana Forestry Camp (“LFC”). The LFC requires that boys ages 15 to 17 who have dropped out of school and reside in Louisiana be sent to camps located on public lands administered by the Louisiana Forest Service until they have reached their eighteenth birthday. During that time, it also provides them with a comprehensive education leading to a high school diploma at the time of their release from the LFC. Boys who are ordered to attend the camps may not come and go as they please and need special permission from the camp director to leave with family when family visit on the weekend. These leave periods cannot extend beyond a six-hour period.

Izayah, age 15, has dropped out of school and, consequently, has been drafted into the LFC. He and his parents are very upset that Izayah has been drafted into the LFC, and they believe that law violates: (1) the Due Process Clause and (2) the Equal Protection Clause.

What arguments should Izayah’s parents make in support of their challenge to the law, and how successful are they likely to be? Discuss.

IN ADDITION TO THE DISCLAIMER AT THE BEGINNING OF THE CONSTITUTIONAL LAW TEST, DO NOT DISCUSS STATE ACTION.

[End of Question 1]

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QUESTION 2 — 40 POINTS

A city in Louisiana (“City”) recently opened a new central bus station. Within the central bus station, the City has provided a large bulletin board that is available for free posting of documents. The City’s only requirement for documents is that they be in both English and Spanish. The City indicates that the reason for this requirement is because the City’s population is about equally divided between English- and Spanish-speaking residents.

The America for Americans Organization (AAO) desired to use the bulletin board to post a flyer but refused to post the flyer in English and Spanish. The flyer was only in English and stated that the AAO’s primary goal is the restriction of immigration into the United States. The flyer also advised of the time and place of meetings and solicits memberships for \$10 each. The City refused to allow the AAO to post its flyer on the bulletin board because it would not post the flyer in both English and Spanish.

The AAO is furious about the City’s refusal to allow it to use the bulletin board. It has sued the City, contending that the City’s restriction is a violation of the rights of AAO’s members under the First Amendment to the U.S. Constitution? Is the AAO’s challenge likely to succeed? Discuss. **IN ADDITION TO THE DISCLAIMER AT THE BEGINNING OF THE CONSTITUTIONAL LAW TEST, DO NOT DISCUSS STATE ACTION.**

[End of Question 2]

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QUESTION 3 — 20 POINTS

Multiple choice questions, each worth 2 points, testing the following areas of law:

- 3.1. Commerce Clause
- 3.2. States' Reserve Powers/Tenth Amendment
- 3.3. Equal Protection
- 3.4. Free Exercise Clause
- 3.5. Procedural Due Process
- 3.6. Standing
- 3.7. Takings Clause
- 3.8. Commerce Clause
- 3.9. State Action
- 3.10. Free Speech – Time, Place and Manner Restrictions

[End of Question 3]

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Question Number One is worth 33 points; Question Number Two is worth 33 points; Question Three is worth 34 points.

QUESTION ONE – (33 points)

DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER.

Judge Dylan, a devout Christian, became chief judge of a parish court in Louisiana. From his experience, Judge Dylan believed that allowing moments of thanksgiving and appreciation prior to the commencement of court proceedings resulted in efficient and less tension filled court hearings. Judge Dylan thought this was very important as that particular parish court had experienced several loud and sometimes violent outbreaks between parties and attorneys recently. Thus, he implemented a new court policy by instructing all judges to begin all court proceedings with a statement of thanksgiving and acknowledgement.

He drafted a statement for the judges to use that reverently acknowledged the Deities of the major religions from around the world. The acknowledgment ended with the following line: "...and as stated on our country's currency: In God we trust." The judges were instructed to ask, before reading the acknowledgement, all those present whether they wished to participate or not. He further instructed the judges to explain that anyone could opt not to participate and could exit the court for the two minute time period during which the acknowledgement was read if they so choose.

April is a stenographer for the court and an atheist. She heard Judge Dylan's acknowledgement and was deeply offended. The next time she had to appear in court she elected not to participate in the acknowledgment, and decided to walk out during the period. Once the acknowledgement was read, a deputy came out and invited her back into the courtroom and the court proceedings began without incident. However, even though no one ever said or did anything, April felt that she received several looks of disapproval from the judge and the other people present in the courtroom, which made her very uncomfortable.

What, if any, constitutional arguments can April raise in a challenge to Judge Dylan's policy; and is she likely to succeed? Discuss.

[End of Question 1]

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QUESTION TWO – (33 points)

DO NOT DISCUSS PROCEDURAL DUE PROCESS.

Deysiah is a resident of Small Town, Louisiana. Deysiah purchased 6 acres of land in Small Town, approximately 3 miles from the Mississippi River. She had plans to subdivide the acres to construct 3 homes on 2 acres each. However, before she could develop the property the Louisiana Legislature enacted a subdivision law, called “Law A”, which requires each parcel in excess of 2 acres and located within 5 miles of the Mississippi River to dedicate to the State of Louisiana for recreational open space a ½ acre of land for every acre in excess of 2 acres in the parcel. Law A expressly provides that its purpose is to reduce the possibility of adverse impact of development to the river.

Law A provides that the dedication is a required condition of any subdivision approval.

Deysiah went to Small Town’s Parish office to begin the subdivision process for her 6 acres to construct the 3 homes on 2 acres each. She was then informed that Law A requires her to dedicate 2 acres to the State. Deysiah is outraged, and she would like to challenge the law.

What, if any, constitutional arguments can Deysiah raise in a challenge to Law A; and is she likely to succeed? Discuss.

[End of Question 2]

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QUESTION THREE – (34 points)

Devin, a State Legislator, sponsored a bill which, when it narrowly passed the state legislature became “The Seafood Surcharge Statute.” This new statute was specifically designed to discourage what he saw as the wholesale slaughter of defenseless animals of the sea. It provided as follows:

All Louisiana Seafood Companies shall pay a surcharge equal to 2% of the gross sales for all seafood commercially sold in the state.

All non-Louisiana Seafood Companies shall pay a surcharge equal to 5% of gross sales for all seafood commercially sold in the state.

. . .

The Louisiana Seafood Surcharge Police is hereby established to collect and monitor payment of the fishing company surcharge.

Mike’s Fishing Company, a Mississippi company headquartered in Gulfport, Mississippi, engages in commercial fishing in Louisiana and sells seafood commercially in Louisiana. Mike’s Fishing Company has prospered over the years, distributing its catch throughout Louisiana.

Louisiana’s Seafood Surcharge Police recently sent the following notice to all seafood companies that, based on its records, were selling seafood commercially in Louisiana—including not only many Louisiana Seafood Companies, but also many non-Louisiana Seafood Companies, including Mike’s Seafood Company:

Dear Commercial Fisherman:

Pursuant to the newly enacted Seafood Surcharge Statute, you are hereby notified that your fishing company is now subject to a surcharge for all seafood which it sells in Louisiana. Please forward quarterly statements of earnings for any such sales so that the surcharge can be correctly calculated.

Sincerely,

The Louisiana Seafood Surcharge Police

Mike’s Fishing Company is concerned about how the statute will affect its earnings. It is considering a legal challenge to the statute.

What, if any, constitutional challenges does Mike’s Fishing Company have to the implementation of the statute and is it likely to succeed? Discuss.

[End of Question 3]

END OF CONSTITUTIONAL LAW EXAM